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United States of America

FILED
08 JUN -4 PM 4:25
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Petitioner, v. SALLY DAWN COBB, Respondent.	Civil No. '08 CV 0997 ~~BTM BLM~~ IEG (RBB) PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONSES

Petitioner, the United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Carol M. Lee, Assistant United States Attorney, petitions the Court for an order to enforce the Internal Revenue Service ("IRS") summonses described below and, in support thereof, alleges as follows:

1. This proceeding is brought at the request of the Chief Counsel, IRS, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States.

2. Jurisdiction over these proceedings is conferred upon this Court by the Internal Revenue Code, 26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C. § 1345.

3. Venue is proper in the Southern District of California because Sally Dawn Cobb ("Respondent") resides in this district at 30673 Andreen Road, Valley Center, California, 92082.

CR

4. At all times relevant, M. Delgado, who issued the summonses to Respondent, was a Revenue Agent with the IRS, employed in the Small Business/Self Employed Division of the IRS, with a post of duty at San Marcos, California Area. See Declaration of Revenue Agent M. Delgado at ¶ 1 ("Delgado Decl."). Revenue Agent M. Delgado was authorized to issue an IRS summons pursuant to the authority contained in 26 U.S.C. § 7602, and Treas. Reg. § 301.7602-1.

5. Agent Delgado is conducting an investigation to determine Respondent's income tax liability for the tax years 2001, 2005, and 2006.[1/] He is also conducting an investigation with respect to the tax year 2001 income tax liability of Michael A. Scott, the brother of Respondent. From June 2007 to February 2008, Revenue Agent Delgado issued four summonses to Respondent; none of which have been complied with by Respondent. The four summonses are outlined below and in the Delgado Decl. attached to this Petition.

I. SCOTT ANGELS SUMMONS and MAKDS SUMMONS (1st AND 2nd SUMMONSES)

6. The first two administrative summonses were issued on June 8, 2007. In furtherance of the investigation with respect to the tax year 2001 liability of Michael A. Scott, and in accordance with 26 U.S.C. § 7602, on June 8, 2007, Agent Delgado issued an administrative summons, IRS Form 2039, to Respondent in her capacity as trustee of an entity known as Scott Angels Pure Trust (hereinafter "Scott Angels Summons"). On the same day, Agent Delgado issued a second administrative summons to Respondent in her capacity as trustee

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[1/] On May 19, 2008, Agent Delgado expanded this investigation to include the 2007 tax year for Respondent because she failed to file a tax return. To that end, on May 22, 2008, Agent Delgado sent Respondent a letter informing her that the 2007 year had been opened for examination. No summons has yet been issued for this tax year but Agent Delgado is still seeking enforcement of the four summonses outlined in this Declaration.

of an entity knows as MAKDS Family Pure Trust (hereinafter "MAKDS Summons"). The IRS believes these are grantor trusts established by Respondent, her brother Michael Scott, and their father, Neil Scott. The summonses required Respondent to appear on July 2, 2007, and give testimony and to produce for examination the documents and records as described in each summons. A copy of the Scott Angels summons is attached to Agent to the Delgado Decl. as Exhibit A. A copy of the MAKDS summons is attached to the Delgado Decl. as Exhibit B.

7. On June 8, 2007, Agent Delgado served the Scott Angels Summons and the MAKDS Summons upon Respondent by handing her an attested copy of each summons in accordance with 26 U.S. C. § 7603, as evidenced in the certificate of service of notice on the reverse side of each summons.

8. On June 8, 2007, Agent Delgado served a notice pursuant to Section 7609(a) of Title 26 of the United States Code, on Michael A. Scott, by sending it by certified mail, as evidenced in the certificate of service of notice on the reverse side of each summons. This notice is required to put the grantor/trustor on notice that the IRS is seeking information from the trustee operating the trust. On June 8, 2007, he also served a Section 7609(a) notice on Kerry D. Scott, Michael Scott's wife, by sending it by certified mail, as evidenced in the certificate of service of notice on the reverse side of each summons. Neither noticee filed a proceeding to quash the summonses.

9. The summonses called for Respondent to appear before Agent Delgado on July 2, 2007. On July 2, 2007, Respondent did not appear in response to the summonses. To date, Respondent has not provided Agent Delgado with the documents requested nor had any contact with

Agent Delgado with respect to the summonses. In fact, before the summonses were issued, Agent Delgado talked to Respondent by phone and questioned her briefly about the trust. Respondent said there was no filing requirement for the trust and no taxes were required for the trust. She also said that she would send Agent Delgado documents supporting her position but she failed to do so and Agent Delgado issued these summonses.

II. DAWN/OASIS SUMMONS (THIRD SUMMONS)

10. In furtherance of the investigation with respect to the tax year 2001 tax liability of Respondent, and in accordance with 26 U.S.C. § 7602, on August 21, 2007, Agent Delgado issued a third administrative summons, IRS Form 2039, to Respondent. The summons required Respondent to give testimony and to produce for examination the documents and records with respect to entities known as Dawn Pure Trust and Oasis Pure Trust, as described in the summons (hereinafter "Dawn/Oasis summons"). The IRS believes that these trusts are Respondent's trusts and her brother, Michael A. Scott, is the trustee for both trusts. Respondent and her brother, Michael A. Scott, serve as trustees and trustors of each other's trusts. A copy of the Dawn/Oasis Summons is attached to the Delgado Decl. as Exhibit C.

11. On August 21, 2007, Agent Delgado served the Dawn/Oasis Summons upon Respondent by handing her an attested copy of the summons, in accordance with 26 U.S.C. § 7603, as evidenced in the certificate of service of notice on the reverse side of the summons.

12. On August 21, 2007, Agent Delgado served the notice required by Section 7609(a)of Title 26 U.S.C., on Michael A. Scott, in his capacity as trustee of the entities known as Dawn Pure Trust and Oasis Pure Trust, by sending it by certified mail, as evidenced in the

certificate of service of notice on the reverse side of the summons. He did not file a petition to quash the summons.

13. The summons called for Respondent to appear before Agent Delgado on September 18, 2007. On September 18, 2007, Respondent did not appear. To date, Respondent has not provided Agent Delgado with the documents requested.

III. COBB TAPESTRY/MEADOWS SUMMONS (FOURTH SUMMONS)

14. In furtherance of the investigation with respect to the tax year 2005 and 2006 liability of Respondent and in accordance with 26 U.S.C. § 7602, on February 28, 2008, Agent Delgado issued a fourth administrative summons, IRS Form 2039, to Respondent (hereinafter "Cobb/Tapestry Meadows Summons"). The summons required Respondent to give testimony and to produce for examination the documents and records with respect to Respondent and Tapestry Meadows Equestrian Center, a business entity owned and managed by Respondent, as described in the summons. A copy of the Cobb/Tapestry Meadows Summons is attached to this Declaration s Exhibit D.

15. On February 28, 2008, Agent Delgado served the Cobb/Tapestry Meadows Summons upon Respondent by handing her an attested copy of the summons, in accordance with 26 U.S.C. § 7603, as evidenced in the certificate of service of notice on the reverse side of the summons.

16. The summons called for Respondent to appear before Agent Delgado on March 13, 2008. On March 13, 2008, Respondent did not appear in response to the summons. To date, Respondent has not provided Agent Delgado with the documents requested.

17. The only contact Agent Delgado has ever had from Respondent regarding the four summonses served upon her, are letters sent certified mail by Respondent to Agent Delgado. After service of each

summons, Respondent has sent an incomprehensible letter that generally states that she is not a "federal U.S. public 'taxpayer'" subject to taxes. Included in her letters are copies of the summonses issued by Agent Delgado with a stamp mark "Returned for Fraud." One such letter dated March 11, 2008, is attached to the Delgado Decl. as Exhibit E.

18. The IRS has received some documents, not from Respondent or her brother, but from third party sources in response to subpoena requests or summons. However, these documents are insufficient and incomplete and documents and oral testimony from Respondent and her brother are required. Therefore, the books, papers, records, and other data sought by the summonses are not already in the possession of the IRS.

19. All administrative steps required by the Internal Revenue Code for the issuance of the summonses have been taken.

20. In order to obtain judicial enforcement of an IRS summons, the United States bears the initial burden of showing "that the investigation may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed . . . ." United States v. Powell, 379 U.S. 48, 57-58 (1964); accord, United States v. Dynavac, 6. F.3d 1407 (9th Cir. 1993). The burden on the Government is a "slight one" and may be satisfied by presenting the declaration of the agent who issued the summons and is seeking enforcement. Id. (citing United States v. Abrahams, 905 F.2d 1276, 1280 (9th Cir. 1990) (other citations omitted)). Once a prima facie case has been made, "a 'heavy' burden falls on the taxpayer" to show an abuse of the court's process or lack of institutional good faith, Dynavac, 6 F.3d at 1280, and respondent "must allege specific facts

and evidence to support his allegations." Liberty Financial Services v. United States, 778 F. 2d 1290, 1292 (9th Cir. 1985) (citation omitted). This matter may be decided on the written record in a summary proceeding. Hotz v. United States, 96-1 USTC para. 50,097 at p. 83,363 (E.D. Calif. 1996). To be entitled to an evidentiary hearing, a respondent must make some showing to refute the United States' prima facie case or present facts supporting an affirmative defense. See Fortney v. United States, 59 F.3d 117, 121 (9th Cir. 1995).

21. Agent Delgado is conducting an investigation to determine Respondent's income tax liability for the tax years 2001, 2005, and 2006. He is also conducting an investigation with respect to the tax year 2001 income tax liability of Michael A. Scott, the brother of Respondent. Delgado Decl. at ¶ 2.

22. Section 7602(a) of the Code specifically allows the issuance of a summons for the purpose of "determining the liability of any person for any internal revenue tax . . . or collecting any such liability . . . ." 26 U.S.C. § 7602(a). Therefore, Agent Delgado's investigation is being conducted pursuant to a legitimate purpose specifically authorized by statute.

23. Further, the testimony, books, papers, records, or other data sought by the summons are not already in the possession of the IRS, with the exception of some documents from third party sources in response to subpoena requests or summons, Delgado Decl. at ¶ 15, and the administrative steps required by the Code, including proper service, have been followed. Id. at ¶¶ 4, 5, 8, 9, 12, 13, and 16.

24. Respondent is in possession and control of the testimony and documents concerning the above-described investigation.

25. The Internal Revenue Code permits the Secretary to summon the records of any person "which may be relevant or material" to the investigation. 26 U.S.C. § 7602(a)(1). It is well-settled that to satisfy the relevancy requirement set forth in Powell, the United States must demonstrate that the summoned information may throw light on the subject of the investigation. Abrahams, 905 F.2d at 1281; United States v. Arthur Young & Co., 465 U.S. 805, 813-14, n. 11 (1984). This standard necessarily presents a low threshold because of the inherent difficulties in ascertaining, prior to examination, how much use the summoned records will be in determining the collectibility of a person's tax liability and whether a person has an income tax liability for a specific period. The Supreme Court has observed that:

> [a]s the language of §7602 clearly indicates, an IRS summons is not to be judged by the relevance standards used in deciding whether to admit evidence in federal court . . . . . The language 'may be' reflects Congress' express intention to allow the IRS to obtain items of even potential relevance to an ongoing investigation, without reference to its admissibility. The purpose of Congress is obvious: the Service can hardly be expected to know which data will be relevant until it is procured and scrutinized.

Arthur Young & Co., 465 U.S. at 814 (internal citation omitted) (emphasis in the original). This low threshold of relevance also follows from the language of the Code, which authorizes the investigation of persons who "may be liable" for taxes. 26 U.S.C. § 7601.

26. Under the instant circumstances, it is clear that the summoned material is relevant. The purpose of Agent Delgado's investigation is to determine Respondent's income tax liability for the tax years 2001, 2005, and 2006, and the income tax liability of Michael Scott for the tax year 2001. The summonses seek, among other

things, information concerning assets, grantors, beneficiaries, and financial transactions of Respondent and of entities of which Respondent and her brother are trustees. See Exhibits A, B, C, and D attached to Delgado Decl. The documents sought by the summonses are clearly relevant to the determination of the income tax liabilities of Respondent for the tax years 2001, 2005, and 2006, and of Michael A. Scott for the tax year 2001.

27. There is no Department of Justice referral for criminal prosecution in effect with respect to Respondent. Delgado Decl. at ¶ 18.

WHEREFORE, the United States requests that:

1. The Court enter an order directing Respondent, Sally Dawn Cobb, to show cause, if any, why she should not comply with and obey the above-described summonses (Delgado Decl. at Exhibits A, B, C, and D) served on her personally and each and every requirement thereof, by ordering the attendance, testimony, and production of the books, papers, records, and other data required and called for by the terms of the summonses before Agent Delgado, or any other proper officer or employee of the IRS at such time and place as may be fixed by Agent Delgado or any other proper officer or employee of the IRS.

2. That the United States recover the costs and expenses incurred in maintaining this action against Respondent.

3. That the Court grant such other and further relief as may be required.

DATED: 6/4/08

KAREN P. HEWITT
United States Attorney

[signature]

CAROL M. LEE
Assistant U.S. Attorney

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED
08 JUN -4 PM 4:36
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: CP DEPUTY

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

SALLY DAWN COBBS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES): San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

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SAN DIEGO, CA 92101-8893
(619) 557-6235

ATTORNEYS (IF KNOWN)

'08 CV 0997 ~~BTM BLM~~ IEG (RBB) IEG

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- [x] 1 U.S. Government Plaintiff
- [ ] 2 U.S. Government
- [ ] 3 Federal Question (U.S. Government Not a Party)
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Petition to Enforce Internal Revenue Service Summons

26 USC §7603

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- [ ] 110 Insurance
- [ ] Marine
- [ ] Miller Act
- [ ] Negotiable Instrument
- [ ] 150 Recovery of &Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Loans (Excl. Veterans)
- [ ] 153Recovery of of Veterans Benefits
- [ ] 160 Stockholders Suits
- [ ] Other Contract
- [ ] 195 Contract Product

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease &
- [ ] 240 Tort to Land
- [ ] 245 Tort Product
- [ ] 290 All Other Real

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product
- [ ] 320 Assault, Libel &
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Liability
- [ ] 360 Other Personal

PERSONAL INJURY
- [ ] 362 Personal Injury-Medical Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443
- [ ] 444 Welfare
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motions to Vacate Habeas Corpus
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prisoner Conditions

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related of Property 21 USC881
- [ ] 630 Liquor Laws
- [ ] 640 RR & Truck
- [ ] 650 Airline Regs
- [ ] 660 Occupational
- [ ] 690 Other

LABOR
- [ ] 710Fair Labor Standards
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor
- [ ] 791 Empl. Ret. Inc.
- [ ] Security Act

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (13958)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [x] 870 Taxes (U.S. or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reappointment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce/ICC
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced Corrupt Organizations
- [ ] 810 Selective Service
- [ ] 850 Exchange
- [ ] 875 Customer Challenge
- [ ] 891 Agricultural Acts
- [ ] 892 Economic
- [ ] 893 Environmental
- [ ] 894 Energy Allocation
- [ ] 895 Freedom of
- [ ] 900 Appeal of Fee Under Equal Access to
- [ ] 950 Constitutionality of
- [ ] 890 Other Statutory

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- [x] 1 Original Proceeding
- [ ] 2 Removal from State Court
- [ ] 3 Remanded from Appelate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See JUDGE Docket Number

DATE
6/4/08

SIGNATURE OF ATTORNEY OF RECORD
CAROL M. LEE, AUSA Carol Lee

CR